

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

| | | |
|---|----------|------------------------------|
| In re: The Narragansett Electric | : | |
| Company d/b/a National Grid | : | |
| Petition for Declaratory Order Regarding | : | Docket No. SB-2020-02 |
| Portable LNG Vaporization Equipment, | : | |
| Old Mill Lane, Portsmouth, Rhode Island | : | |

MEMORANDUM OF TOWN OF PORTSMOUTH

The Town of Portsmouth (“Portsmouth” or the “Town”) submits this memorandum to the R.I. Energy Facility Siting Board (“EFSB” or the “Board”) in response to the Petition for Declaratory Order filed by The Narragansett Electric Company d/b/a National Grid (“Petitioner” or “National Grid”).

On October 24, 2019, National Grid filed a petition for a waiver from the licensing requirements of the Energy Facility Siting Act (the “Act”), R.I. General Laws Chapter 42-98, for a liquified natural gas (“LNG”) vaporization facility in a residential neighborhood on Old Mill Lane in Portsmouth. Docket No. SB-2019-04. According to National Grid, the LNG vaporization facility is designed to supply natural gas to the Aquidneck Island distribution system in the event of any interruption of service, and it consists of portable vaporizers, booster pumps, storage tanks, generators, an odorizer system, and a mobile office. Petitioner sought a waiver of EFSB licensing to operate the vaporization facility for four months (from December 1 to April 1) each year for four years, as well as every time there is a scheduled inspection of the natural gas transmission lines. National Grid has also identified the Old Mill Lane LNG vaporization facility as one of four long-term solutions (and the least-cost option) for supplying natural gas to its customers on Aquidneck Island.¹

¹ See attached PowerPoint presentation that National Grid gave to the Portsmouth Town Council on October 26, 2020 (Exhibit 1).

In the present docket, National Grid asks this Board to issue a declaratory ruling that it has no jurisdiction over the Old Mill Lane LNG vaporization facility – and apparently, no jurisdiction over any similar LNG vaporization facility located and operated by National Grid anywhere else in the State of Rhode Island – because it allegedly is not a “major energy facility” as defined by § 42-98-3(d) of the Act and Rule 1.3.A.16 the EFSB’s Rules of Practice and Procedure.

It is the Town’s position that the Old Mill Lane LNG vaporization facility is indeed a major energy facility subject to EFSB jurisdiction and licensing requirements under the Act. However, in the event EFSB determines otherwise, National Grid’s LNG vaporization facility will be subject to the jurisdiction of the Portsmouth Zoning Board of Review and other local boards and officials.

I. The LNG Vaporization Facility on Old Mill Lane is a “Major Energy Facility” as defined by the Act and, therefore, it is subject to EFSB Jurisdiction and Licensing Requirements.

The Act provides that “[n]o person shall site, construct, or alter a major energy facility within the state without first obtaining a license from the siting board pursuant to this chapter. R.I. Gen. Laws § 42-98-4. The definition of a “major energy facility” includes “facilities for the conversion, gasification, treatment, transfer, or storage of liquefied natural and liquefied petroleum gases....” R.I. Gen. Laws § 42-98-3(d) and EFSB Rule 1.3.A.16.

The interpretation of a statute is a question of law. *See, e.g., Palazzo v. State ex rel. Tavares*, 746 A.2d 707, 711 (R.I. 2000). The task is “to give effect to the General Assembly’s intent, which is best found in the plain language used in the statute.” *Tarzia v. State*, 44 A.2d 1245, 1252 (R.I. 2012) (citations and internal quotation marks omitted). “When we examine an unambiguous statute, there is no room for statutory construction and we must apply the statute as written.” *In re Harrison*, 992 A.2d 990, 994 (R.I. 2010)

(internal quotation marks omitted); *see also Mut. Dev. Corp. v. Ward Fisher & Co., LLP*, 47 A.3d 319, 328 (R.I. 2012). It must be presumed “that the General Assembly intended to attach significance to every word, sentence and provision of a statute.” *Retirement Board of Employees' Retirement System of Rhode Island v. DiPrete*, 845 A.2d 270, 279 (R.I. 2004) (citation omitted).

With regard to the Energy Facility Siting Act, the General Assembly has prescribed that “[t]he provisions of this chapter shall be construed liberally to effectuate its purposes.” R.I. Gen. Laws § 42-98-18.

In this case, the LNG vaporization facility on Old Mill Lane fits squarely within the definition of a “major energy facility” as set forth in § 42-98-3(d) and EFSB Rule 1.3.A.16. It is, undeniably, a facility where liquid natural gas is transferred, stored, converted and regasified back to natural gas at atmospheric temperature. Petitioner’s characterization of the LNG vaporization facility as “temporary” and the individual components of the facility as “portable” – and the fact that it chooses to continuously and repeatedly mobilize, demobilize, and remobilize the facility for operation – is of no import in determining whether this constitutes a major energy facility under the Act.

Petitioner concedes there is no ambiguity in the statutory language that needs to be construed or interpreted. The definition of a “major energy facility” contains no exception for a facility that is composed of portable components, or a facility that is not in continuous operation. Petitioner, therefore, asks the Board to disregard the plain language and not apply the statute literally, arguing that it would be “absurd” if the statute were to provide for EFSB jurisdiction and licensing of this LNG vaporization facility.

The Board should summarily reject this argument. Certainly, there is nothing absurd about the EFSB having jurisdiction and licensing authority over National Grid’s LNG vaporization facility on Old Mill Lane (just as it did over the LNG vaporization

facility that National Grid previously used at the Naval Base). To the contrary, Portsmouth submits that it would be absurd to allow National Grid to evade EFSB jurisdiction, review and licensing of this LNG facility under the Act.

II. National Grid's LNG Vaporization Facility on Old Mill Lane is Not a Permitted Use as a Matter of Right under the Portsmouth Zoning Ordinance. The Facility Requires a Special Use Permit that must be Granted by the Portsmouth Zoning Board of Review.

If the EFSB finds it has no jurisdiction, National Grid will need to obtain local review and approvals.

Portsmouth first wishes to correct an apparent misunderstanding between National Grid and the Town regarding the Zoning Certificate issued by the Town in the Spring of 2018. In its present petition (p. 7), National Grid states that “[t]he use of the Property for operating the [LNG vaporization] Equipment did not require any zoning relief, but the Company received a zoning certificate for the use of the Property for LNG purposes.” In its November 5, 2019 supplement to its petition for waiver (p. 5), National Grid stated that the Town “issued a zoning certificate for the continued use of the Property for LNG purposes.” These statements are inaccurate.

At page 6 of its petition, National Grid describes the circumstances surrounding its first use of a temporary LNG vaporization facility on Old Mill Lane, for a brief period of time in the Spring of 2018, in connection with an inspection that was scheduled to be performed by Algonquin Gas Transmission, LLC (“AGT”) on its pipeline which supplies natural gas to Aquidneck Island.

During previous AGT pipeline inspections, National Grid used the existing LNG vaporization facility located at the Newport Naval Base as a backup in the event the

pipeline inspection impeded the supply of natural gas to Aquidneck Island.² However, in the Spring of 2018, National Grid was in a quandary because it was no longer able to use the LNG vaporization facility at the Naval Base to produce a backup supply of natural gas. National Grid approached the Town to try to find a way to bring a temporary LNG vaporization facility to its Old Mill Lane property on a one-time, emergency basis, to be used if necessary due to any supply disruptions during AGT's upcoming pipeline inspection.

Under the Portsmouth Zoning Ordinance, a special use permit is required for a public utility use, including the installation and operation of an LNG vaporization facility. Due to the exigencies presented, National Grid indicated that it was not feasible for it to apply to the Portsmouth Zoning Board of Review for a special use permit before AGT proceeded with the pipeline inspection. The temporary vaporization facility needed to be installed and operational forthwith, on an emergency basis. The emergency project would be concluded and the vaporization facility removed from the site before there could be any application and hearings before the Zoning Board of Review. National Grid sought the Town's assistance and cooperation in coming to a solution of its logistical problems.

On April 3, 2018, the Town issued a Zoning Certificate signed by the Assistant Town Planner.³ The Zoning Certificate allowed National Grid to proceed with its proposed LNG vaporization facility without obtaining Zoning Board approval, but *only* for that single "emergency" project of "limited duration" relating specifically to the 2018 AGT

² As this Board observed in its January 8, 2020 Order allowing National Grid a temporary two-year waiver (effective as of November 6, 2019), the LNG vaporization facility at the Naval Base was licensed by the EFSB in 2000.

³ A copy of the April 3, 2018 Zoning Certificate is attached as Exhibit 2.

pipeline inspection, which was to take place during a period of one week. Since then, the Town has issued no further zoning certificates for any LNG facility or use.⁴

In no way does the April 3, 2018 Zoning Certificate provide that an LNG vaporization facility, or any other LNG-related use of any nature, extent, intensity or duration, is allowed on National Grid's Old Mill Lane as a matter of right pursuant to the Portsmouth Zoning Ordinance.

In order to avoid any further misunderstanding, the Town hereby advises this Board and National Grid that, under the Portsmouth Zoning Ordinance, the LNG vaporization facility on Old Mill Lane is *not* allowed without a special use permit granted by the Portsmouth Zoning Board of Review. If National Grid were to apply to the Portsmouth zoning official for a zoning certificate stating that the LNG vaporization facility at Old Mill Lane complies with the Zoning Ordinance and is a permitted land use as a matter of right, such application would be denied.⁵

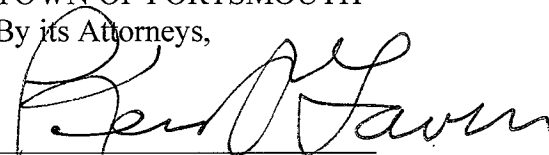
⁴ During the summer of 2019 there were some informal email communications regarding National Grid's need to undertake another temporary emergency project involving similar circumstances and logistical constraints, and whether another zoning certificate would be needed for a second emergency project.

⁵ A zoning certificate is "[a] document signed by the zoning-enforcement officer, as required in the zoning ordinance, that acknowledges that a use, structure, building, or lot either complies with, or is legally nonconforming to, the provisions of the municipal zoning ordinance or is an authorized variance or modification therefrom." R.I. Gen. Laws § 45-24-31(70). "In order to provide guidance or clarification, the zoning enforcement officer or agency shall, upon written request, issue a zoning certificate or provide information to the requesting party as to the determination by the official or agency within fifteen (15) days of the written request. In the event that no written response is provided within that time, the requesting party has the right to appeal to the zoning board of review for the determination." R.I. Gen. Laws § 45-24-54. Zoning certificates are designed to provide guidance or clarification to the requesting party, and are not legally binding. *See Parker v. Byrne*, 996 A.2d 627, 633 (R.I. 2010).

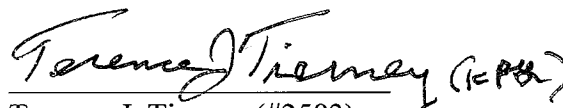
Accordingly, if the EFSB determines that the LNG vaporization facility in question is not a major energy facility and, therefore, that the EFSB lacks jurisdiction over this facility, then National Grid will need to apply for and obtain a special use permit from the Portsmouth Zoning Board of Review, as well as any other permits and approvals that may be required from other local boards and officials.

TOWN OF PORTSMOUTH

By its Attorneys,



Kevin P. Gavin (#2969)
Portsmouth Town Solicitor
Law Office of Kevin P. Gavin
31 Harrington Avenue
Portsmouth, RI 02871
401-683-2044 Telephone
401-682-2122 Fax
kevingavinlaw@gmail.com



Terence J. Tierney (#2583)
Attorney at Law
232 John Dyer Road
Little Compton, RI 02837
401-316-4566
tierneylaw@yahoo.com

CERTIFICATION OF SERVICE

I hereby certify that a copy of the within Memorandum was sent via email to the Service List on the 2nd day of November, 2020.

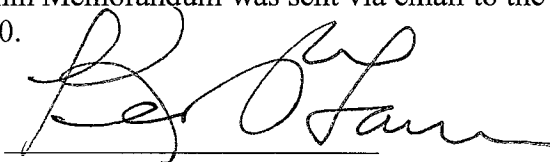


Exhibit 1

Aquidneck Island Long-Term Energy Solutions

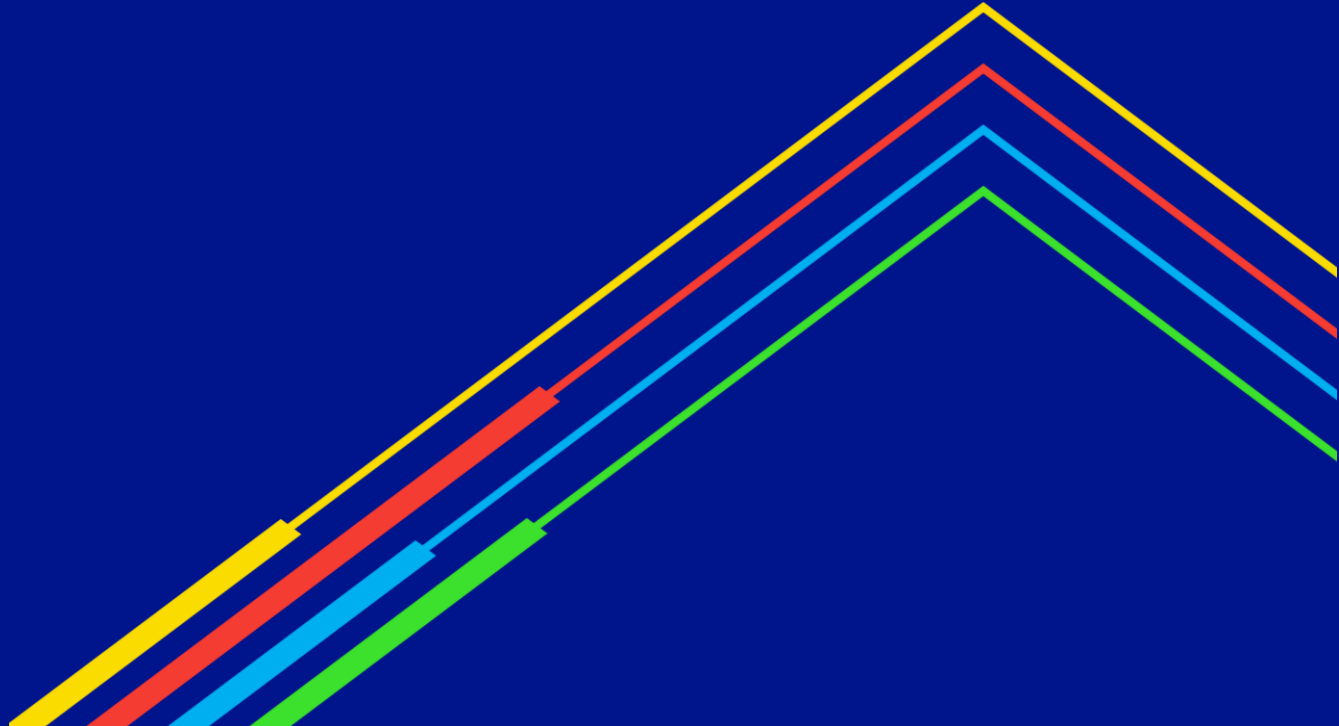
October 2020

national**grid**



1 Winter Operations at Old Mill Lane – Portsmouth, RI

national**grid**



Old Mill Lane Temporary LNG Site - Portsmouth

Purpose of Operation:

- Primary function is to provide supplemental gas supply to Aquidneck Island when pipeline supply cannot meet the demand (which can happen on the coldest winter days.)
- During high demand days, the facility will vaporize the stored LNG and inject it into the pipeline, thus shaving the top off the peak demand (“peak-shaving”)
- The Old Mill Lane facility operates temporarily and is staged seasonally only (during winter months).
- After winter, the facility is fully de-mobilized and all LNG equipment is removed and the site is no longer needed.



Winter Operations – 2020/21

Old Mill Lane Trucked LNG Site - Portsmouth

- September – Installation of new electrical service (to reduce need of continuous generator onsite – reducing noise).
- October – site preps begin, such as fencing and ground mat installation.
- November - all the electrical gear installed, office trailer delivered, LNG equipment delivered and staged, and testing performed
- December 1st – site operational - will provide additional supply into the Aquidneck Island natural gas system if peak-hour demand is above contracted supply or there is an event impacting transmission supply to the island
- April 1 – site demobilized
- To Note - Last winter the site did not inject for supply need



2 Long-Term Energy Solutions

nationalgrid

nationalgrid

Aquidneck Island Long-Term Gas Capacity Study

Prepared by National Grid

September 2020



Two Challenges Facing Aquidneck

1 Gas Capacity Constraint

Interstate pipeline operators have restricted how much gas **National Grid** can bring into Aquidneck via the pipe going into Portsmouth.

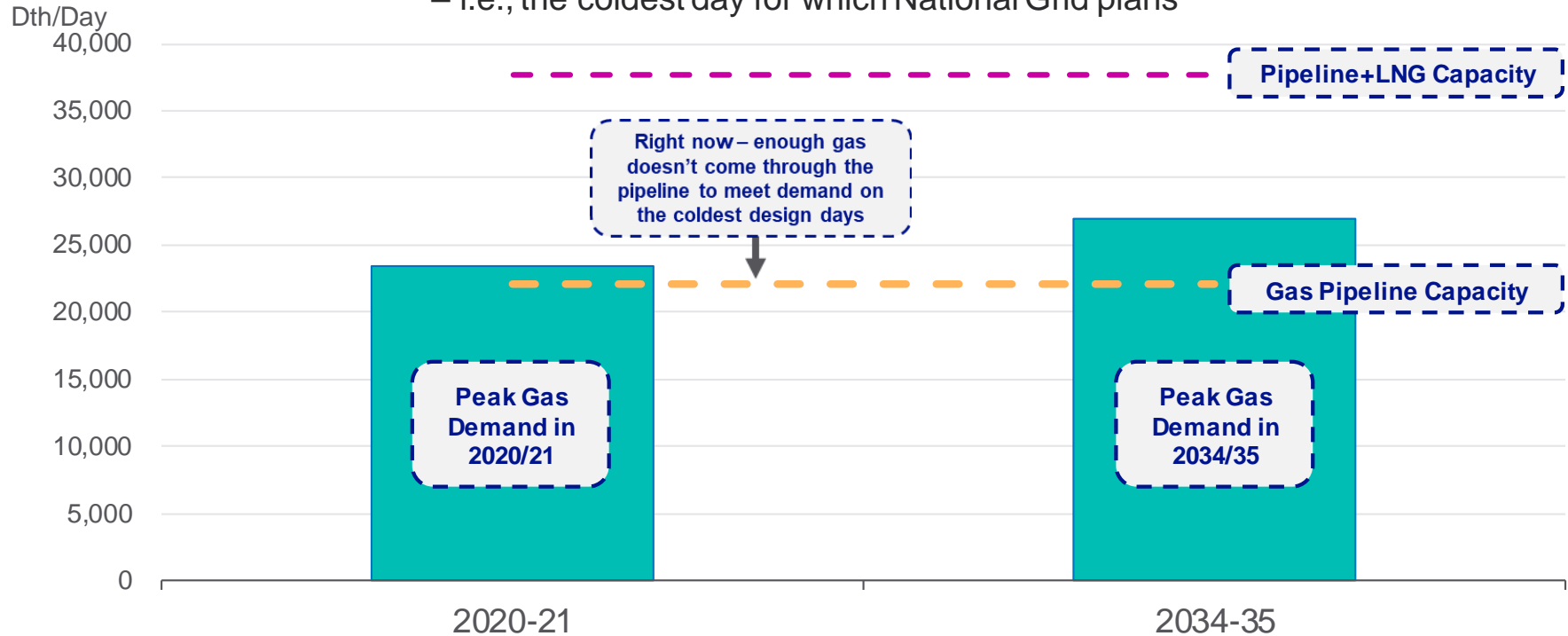
On extremely cold days, this means that **gas demand on Aquidneck will exceed gas supply into the island.**

2 Gas Capacity Vulnerability

Aquidneck is supplied gas by a single transmission pipeline, and is at “the end of a pipe.” **That means pipeline incidents elsewhere can disproportionately impact Aquidneck.**

Gas Demand vs Pipeline Capacity on Aquidneck

Expected Gas Demand on Aquidneck on a “Design Day”
– i.e., the coldest day for which National Grid plans



Current Efforts to Ensure Reliability on Aquidneck

Portable LNG (Liquefied Natural Gas) at Old Mill Lane

- National Grid installed portable LNG capacity at Old Mill Lane in Portsmouth as a source of extra gas supply.
- While we expect to rarely use this facility—**last year, the LNG facility was not needed or used**—it greatly reduces the chance of a service interruption. In fact, even on extremely cold days, **the Old Mill Lane facility could supply nearly 50% of the island on its own.**
- National Grid is taking action to reduce any impact on nearby residents.

Energy Efficiency and Demand Response

- National Grid has partnered with Aquidneck municipalities to increase participation in energy efficiency programs
- National Grid has implemented a gas “demand response” pilot (e.g., compensating customers for reducing their gas usage)

Finding a Long-Term Solution

National Grid undertook an extensive process to develop long-term solutions to the gas need on Aquidneck. **We looked at a wide variety of options, considering everything from a new gas pipeline to converting gas heating systems to electric.**

National Grid has not yet developed a recommendation. Before we do so, we are using opportunities like this to gather community feedback. **Today, we'll review four different approaches to meeting the need on Aquidneck Island.**

National Grid has only proposed solutions that are safe for Aquidneck residents and our employees.

For each solution, we have identified any needed safety procedures, which you can read about in the Aquidneck Island Long-Term Gas Capacity Study (posted online).

Approach to Identifying Potential Long-Term Solutions

From a wide variety of solutions considered...

- Portable Liquefied Natural Gas (LNG)
- Permanent LNG
- Pipeline infrastructure
- Energy efficiency
- Gas demand response
- Heat electrification
- Renewable natural gas
- Hydrogen blending



We identified four solution portfolios that could close the demand gap **and** provide backup supply in the event of an upstream pipeline disruption

1

Non-Infrastructure Solution relying exclusively on electrification, demand response, and efficiency

2

LNG Solution at new location, including potential for low-carbon hydrogen

3

Transmission Pipeline Project (AGT)

4

Continue Portable LNG at Old Mill Lane, with demand-side measures to preserve contingency

Old Mill Lane used in interim years until new capacity is established

Incremental gas EE and DR can complement infrastructure in these solutions

1 Exclusively Non-Infrastructure Solution

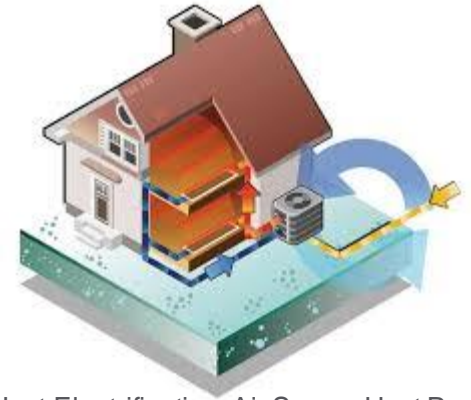


What It Means:

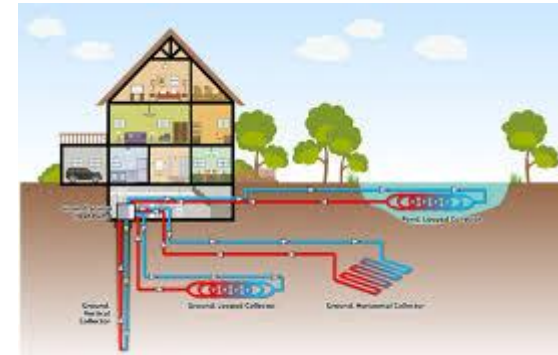
Dramatically reduce gas demand by 1) electrifying most gas customers, 2) launching new gas demand response programs, and 3) ramping up energy efficiency—all incremental to current state-wide energy efficiency programs and specific to Aquidneck Island



National Grid

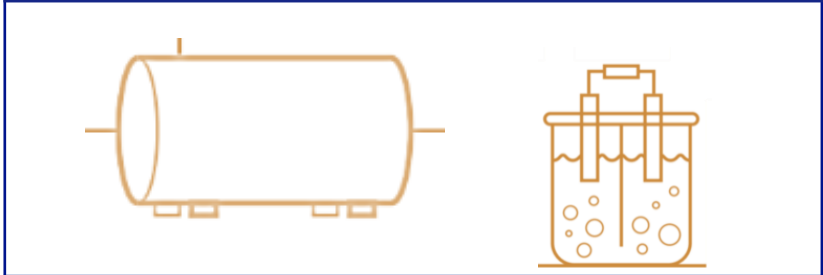


Heat Electrification: Air Source Heat Pumps



Heat Electrification: Ground Source Heat Pumps

2 New LNG (with long-term hydrogen hub potential)



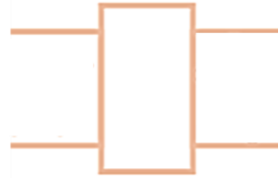
What It Means:

Could take various forms: 1) Portable or permanent LNG facility at a new Navy site, or 2) LNG barge offshore of the island. Old Mill Lane used through at least 2023/24 as solution is implemented. Can be paired with new gas demand response and energy efficiency.

Option to use on-site electrolyzer to produce hydrogen that can be blended into the gas network and potentially provide local supply for an eventual 100% hydrogen network or distribution for other uses.



3 Transmission Pipeline Project – *potential AGT project*



What It Means:

Work with interstate pipeline operator to develop a new project, targeted either for Aquidneck or for broader region. National Grid evaluated an approach that would solve reliability concerns but need additional energy efficiency / demand response to meet growing demand. Assumes cost-share with Massachusetts.



4 Continue Portable LNG at Old Mill Lane



What It Means:

Continue to rely on portable LNG at current Old Mill Lane site indefinitely, which meets projected needs through at least 2034/35. Can be paired with incremental demand response and energy efficiency to maintain current levels of reliability even as demand grows.



Considerations for Evaluation
























All options will require continuing to use Old Mill Lane site for at least 3-4 years

| | Non-Infrastructure | New LNG | AGT Pipeline Project | Portable @ OML paired w/ DSM |
|------------------------------|--------------------|-------------------------|----------------------|------------------------------|
| Last Year Old Mill Ln Needed | Circa 2032/33 | 2023/2024 (at earliest) | 2028/29 | n/a |

In addition to timing, we've evaluated all options on:

| | | | | |
|------|-------------|------------------|----------------------|-------------|
| Cost | Reliability | Community Impact | Environmental Impact | Feasibility |
|------|-------------|------------------|----------------------|-------------|

Summary: Cross Comparison

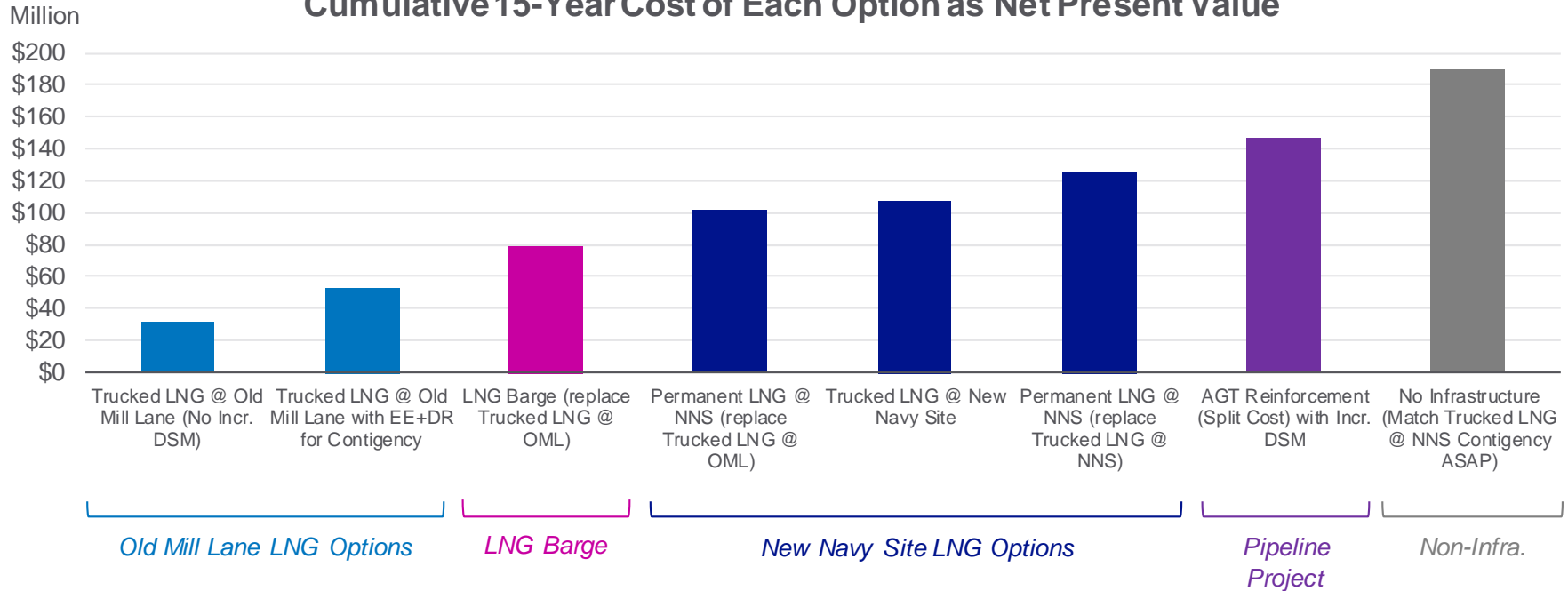
| | Non-Infra | New LNG | AGT Pipeline Project | Portable @ OML paired w/ DSM |
|----------------------------|---|---|---|---|
| Size | ~14,000 Dth/day | 12,000-14,000 Dth/day (incl. DSM) | AGT N/A (+5,000 Dth/day DSM) | 15,600+ Dth/day (+3,000 Dth/day DSM) |
| Last Yr Old Mill Ln Needed | Circa 2032/33 | 2023/24 (port./barge) 2025/26 (permanent*) | 2028/29 | n/a |
| Cost |  |  Barge  Navy |  |  |
| Reliability |  |  Port./Barge  Perm. |  |  |
| Community |  |  |  |  |
| Local Environmental |  |  |  |  |
| Implementation |  |  Barge  Navy |  |  |

Note: All figures represent Base Demand Scenario. Additional data provided in supporting report—some figures in process of being finalized. Capacity = 2034-35 capacity.

* If replacing portable at Old Mill Lane. If replacing portable at new navy site, then 2023/2024.

Cost Comparison

Cumulative 15-Year Cost of Each Option as Net Present Value



We need your feedback! Go to: ngrid.com/aquidneck

The screenshot shows the National Grid website for Aquidneck Island. The browser address bar displays nationalgridus.com/aquidneck-long-term-gas-capacity-study. The navigation bar includes links for Rhode Island, Gas and Electric, For your Business, Gas Emergencies, Power Outages, Our Company, and Contact Us. The main header features the National Grid logo and navigation links for Your Accounts, Billing & Payments, Save Energy & Money, and Safety & Outages. A green button for 'Pay Your Bill' and a blue button for 'Sign In / Register' are also present.

The main content area contains the following text:

portfolios. All proposed solutions are safe, and for each, we have identified timelines, costs, reliability implications, community impacts, local environmental impacts, and implementation feasibility. All proposed solutions will continue to advance demand side management initiatives (energy efficiency and demand response) that have already started across Aquidneck Island.

Our goal of this study is to help inform more discussions and gather feedback from a variety of stakeholders. In addition to attending a virtual open house in October, customers can also offer their feedback using the link below. Our hope is that we can provide a recommendation by the end of the year on a path forward to pursue a long-term solution or combination of solutions for Aquidneck Island. We look forward to your review and welcome your feedback.

On the left side of the page, there is a vertical blue bar with the word 'Feedback' written vertically. Below the main text, there are two links:

- ▶ [Read the Full Report](#)
- ▶ [Submit Your Feedback](#)

The 'Submit Your Feedback' link is circled in red. To the right of the main text, there is a thumbnail image of a document titled 'Aquidneck Island Long-Term Gas Capacity Study' prepared by National Grid, dated September 2020. Further to the right, there is a section titled 'Winter Reliability Measures for Aquidneck Island' with a sub-header 'Learn more about steps National Grid has taken to prepare for gas operations during this upcoming winter season.' Below this, there is a link: ▶ [Gas Reliability on Aquidneck Island](#). At the bottom right, there is a section titled 'Clean Energy Promise for Rhode Island'.

national**grid**

Exhibit 2



TOWN OF PORTSMOUTH

2200 East Main Road • Portsmouth, Rhode Island 02871 • www.portsmouthri.com

Michael A. Asciola
Assistant Town Planner

(401) 643-0333
masciola@portsmouthri.com

April 3, 2018

ZONING CERTIFICATE

George W. Watson III
Robinson & Cole LLP
One Financial Plaza
Suite 1430
Providence, RI 02903

| Property Information | | | |
|--------------------------|----------------|-----------------------|----------|
| Owner | Street Address | Assessor's Plat & Lot | Lot Area |
| NARRAGANSETT ELECTRIC CO | 0 OLD MILL LN | A.P. 68 – Lot 74 | 5 ACRES |

The Narragansett Electric Company d/b/a National Grid (“National Grid”) is proposing to temporarily locate portable liquefied natural gas (LNG) vaporization units (the “Project”) on its former propane tank farm property on Old Mill Lane, Parcel 68-74 (the “Property”). The Project is needed to provide emergency backup natural gas supply for all of Aquidneck Island while the Algonquin Gas Transmission Company (“Algonquin”), owner of the gas transmission line that supplies the Aquidneck Island distribution system, performs an inspection of the transmission line. The Project will allow National Grid to maintain reliable gas supply to its customers in the event the gas transmission line is taken offline during the inspection process. Without this Project all of Aquidneck Island would lose gas service if the gas transmission line were taken out of service during the inspection. In addition, once service is restored National Grid would be required to relight each individual service. The inspection of the transmission system is scheduled to occur during the daytime for a few days in late Spring 2018. The Project will last approximately four weeks which includes the setup and removal of all equipment.

The Project includes three mobile vaporization units, 6 portable storage tanks (2 for each vaporization unit), generators for the lighting, security fence with fabric screening, and lighting along the fenced perimeter. The lighting will be angled down towards the equipment within the fenced area. Throughout the duration of the Project, the Property will be staffed by security and National Grid

TOWN OF PORTSMOUTH

2200 East Main Road • Portsmouth, Rhode Island 02871 • www.portsmouthri.com

personnel 24 hours a day. Once the pipe inspection is completed, the temporary facility will be removed from the Property.

The Property is owned by National Grid and was formerly used as a propane tank station. The two abutting properties to the east are also presently used for utility purposes. 24 Old Mill Lane – Parcel 68-72, is owned by the Algonquin and is a gate station for the transmission line. The property located behind the Algonquin parcel, 135 Old Mill Lane – Parcel 68-73, is owned by National Grid and is used in connection with the gas distribution system.

Although this Project is planned in advance of the transmission line inspection, it is an emergency response that National Grid has deemed necessary to avoid the loss of gas supply to all of Aquidneck Island. In light of the following unique circumstances it has been determined that no relief is necessary for the Project: limited duration, no permanent structures or improvements to the Property, and consistency with the former use of the Property.

This information was researched on April 3, 2018 by the undersigned, per request and as a public service. The undersigned certifies that the above information contained herein is believed to be accurate and is based upon, or relates to the information supplied by the requestor. The Town assumes no liability for errors and omissions. All information was obtained from public records, which may be inspected during regular business hours.



Michael A. Asciola
Assistant Town Planner

Date: April 3, 2018